

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006  
Section 24**

**Chamber Ref: FTS/HPC/RP/17/0221**

**Title no/Sasines Description: REN54655**

**Flat 0/2, 31 Montgomery Road, Gallowhill, Paisley, PA3 4PP  
("the House")**

**The Parties:-**

**Miss Lauren Black, residing at the House  
(represented by her agents, Miss Claire Strong and Miss Lynne Hendry,  
Shelter Scotland-Foundations First, 10 Falcon Crescent, Ferguslie, Paisley)  
("the Tenant")**

**Ms Yvonne Fletcher, 3 Gladstone Place, Edinburgh, EH6 7LX  
("the Landlord")**

Whereas in terms of their decision dated 14 August 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the Landlord has failed to ensure that:-

- (a) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.  
(Section 13 (1) (b) of the 2006 Act)

the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the Landlord:-

- (a) To instruct a report from an appropriately qualified contractor to establish the cause of the dampness located within the kitchen ceiling, to carry out all necessary works to eradicate said dampness, to make good any damage to decoration as a result of these works and to produce to the Tribunal a copy of the report and written confirmation from the contractor that the works have been carried out.

- (b) To repair or replace all parts of the kitchen floor affected by dampness and to make good any damage to any floor covering caused by these works.
- (c) To instruct a report by an approved pest control contractor in relation to the existence of insects located within the House and to carry out all works recommended by the said report.

The Tribunal order that the works specified in this Order must be carried out and completed within the period 6 weeks from the date of service of this Notice.

**A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

In terms of Section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this and the preceding page are executed by Patricia Anne Pryce, legal member of the Tribunal, at Glasgow on 14 August 2017 in the presence of the undernoted witness:-

**N Pryce** witness

**P A Pryce**

NICHOLAS PRYCE name in full

55 BLYTHSWOOD ST Address

GLASGOW

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# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref: FTS/HPC/RP/17/0221**

**Flat 0/2, 31 Montgomery Road, Gallowhill, Paisley, PA3 4PP  
("the Property")**

**The Parties:-**

**Miss Lauren Black, residing at the property  
("the Tenant") (represented by Miss Claire Strong and Miss Lynne  
Hendry, both of Shelter Scotland- Foundations First, 10 Falcon Crescent,  
Ferguslie, Paisley)**

**Ms Yvonne Fletcher, 3 Gladstone Place, Edinburgh, EH6 7LX  
("the Landlord")**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the representations submitted by the Landlord and the Tenant's representatives at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**The tribunal consisted of:-**

<b>Patricia Anne Pryce</b>	<b>- Legal Member</b>
<b>Nick Allan</b>	<b>- Ordinary Member (Surveyor)</b>

**Background**

- 1. By application comprising documents received between 13 and 19 June 2017, the Tenant applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").**

2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and that the said failure was established as follows:-

- (a) "There was mould on the top corner of the ceiling in the kitchen.
- (b) There was a spongy, wet wall in the bathroom.
- (c) Overflowing waste pipe when dishwasher is on.
- (d) Condensation between panes in living room window.
- (e) Radiator not attached to living room wall.
- (f) Mould mites in bathroom and kitchen.
- (g) Dampness in boys' bedroom."

The Tenant considered that the Landlord is in breach of her duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
  - (ii) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
  - (iii) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they were designed.
3. By Minute dated 23 June 2017 the Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a tribunal.
4. The tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenant and the Tenant's representatives advising that the inspection and hearing would take place on 8 August 2017 at 9.30 am and 1 pm respectively. Submissions were received from the Landlord and the Tenant's representatives. The Tenant's representatives confirmed that they would attend the hearing on behalf of the Tenant as the Tenant could not attend the hearing due to child care issues.

### **The Inspection**

5. An inspection and hearing were arranged for 8 August 2017 at 9.30 am and 1 pm respectively. The tribunal attended at the property. Both the Landlord and the Tenant were in attendance at the property along with the Tenant's

representatives and the Landlord's contractor, Mr Alistair Matheson. The tribunal noted the following at inspection:-

- Damp meter readings taken in the rear bedroom of the property, referred to in the application as "the boys' bedroom", were within the normal range indicating that there was no dampness in the room.
- The far-left hand corner of the kitchen ceiling at the gable wall end was saturated. Below surface damp meter readings using radio waves were taken of this area and they revealed that the ceiling was saturated beneath the surface. It was evident that the water penetration at this location has been a persistent issue since there was evidence that the ceiling had previously been repaired.
- The floor located immediately in front of the sink in the kitchen was saturated. Damp meter readings revealed a significant level of moisture in this area of the kitchen floor.
- The waste pipe leading to the dishwasher had been repaired and now functioned well.
- There were three beetle-like insects located on the kitchen floor.
- An extractor fan had been fitted on the wall of the kitchen and appeared to function properly when switched on.
- In the bathroom, the wall was tested with a damp meter which indicated that there was surface moisture on the wall but no penetrating dampness. An extractor fan had been fitted to the bathroom wall and appeared to function properly when switched on.
- There were no mould mites noted in the bathroom or kitchen.
- Although not part of the present application, there were a couple of cracked floor tiles located in the bathroom.
- The window panes in the living room had been replaced.
- The radiator in the living room had been affixed to the wall.
- Although not part of the present application, medium damp level readings were recorded between the curtain rail and the living room window.
- Although not part of the present application, it was noted that there were no control valves on any of the radiators within the property.
- There were sufficient smoke and heat detectors within the property which were hard-wired and interlinked and there was a carbon monoxide detector located near the gas boiler.

The schedule of photographs taken by the ordinary member of the tribunal at the inspection is attached to this decision.

### **The Hearing**

6. The Landlord, Mr Matheson, Miss Strong and Miss Hendry attended at the hearing. As indicated above, the Tenant could not attend the hearing.

The tribunal advised the parties of their findings at inspection as noted above. The parties indicated that they agreed with these findings.

Mr Matheson confirmed that he had fixed the waste pipe leading to the dishwasher but that there had been substantial water ingress to the kitchen floor. He advised that he would be carrying out works to this area of the floor including up to a metre in front of the kitchen sink and that by removing the present flooring, treating the joists to prevent rot and replacing the flooring. He advised that he had been due to carry this work out last week but that the Tenant could not provide him with access last week for this purpose.

Mr Matheson confirmed that he had carried out works to the walls of the rear bedroom and painted this.

Ms Fletcher confirmed that she had instructed the works as outlined by Mr Matheson.

The Tenant's representatives confirmed that they did not disagree with what the tribunal had noted at the inspection nor with the submissions of the Landlord and Mr Matheson.

### **Summary of the issues**

7. The issue to be determined is whether the repairing standard has been met in light of what the tribunal viewed at the inspection.

### **Findings of fact**

8. The tribunal finds the following facts to be established: -
  - The Tenant entered into a tenancy with the Landlord which was a short-assured tenancy.
  - The Tenant remains in the property.
  - The property is a ground floor flat within a three-storey terraced block of flats constructed circa 1975. It comprises a living room, kitchen, three bedrooms and bathroom.
  - There is no dampness present in the rear bedroom.
  - There is penetrating dampness located in the kitchen ceiling.
  - There is dampness located in the kitchen floor near the kitchen sink.
  - There were insects located on the kitchen floor.
  - The living room window pane had been replaced.
  - The waste pipe for the dishwasher had been repaired.
  - The radiator in the living room had been affixed to the wall.

### **Reasons for the decision**

9. The tribunal noted that in terms of the present application the Tenant had first notified the Landlord of the outstanding repairs in December 2016, over

eight months ago. Despite this and despite various works having been carried out to the property by the Landlord, outstanding repairs issues remained.

Given all of the circumstances, the tribunal is satisfied that: the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order as there is penetrating dampness located in the kitchen ceiling and the kitchen floor is saturated as a result of water ingress; any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order as the radiator in the living room had been affixed to the wall; any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed as the Tenant did not make any submissions in relation to this part of the repairing standard.

### **Decision**

10. The tribunal accordingly determined that the Landlord had not complied with the duty imposed by Section 14 (1)(b) of the Act.
11. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
12. The decision of the tribunal was unanimous.

### **Right of Appeal**

13. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined

Signed

**P A Pryce**

Date 14 August 2017

Legal Member



**Photograph Schedule**  
**Flat 0/2, 31 Montgomery Road, Gallowhill, Paisley, PA3 4PP**

**Case Reference:** FTS/HPC/RP/17/0221

**Surveyor:** Nick Allan

**Date of inspection:** 08/08/2017

**Time of inspection:** 09.30 am

**Weather conditions:** Dry and sunny

**Present:** Miss Patricia Anne Pryce – Legal Member  
Mr Nick Allan – Ordinary Member  
Mr Mike Links – Ordinary Member (Appraiser)  
Miss Lauren Black - Tenant  
Ms Yvonne Fletcher – Landlord  
Miss Claire Strong – Tenants representative  
Miss Lynne Hendry – Tenants representative  
Mr Alistair Matheson – Landlords contractor



**Photo 1 – Front elevation**



**Photo 2 – Rear elevation**





**Photo 3 – Boys' bedroom – No dampness**



**Photo 4 – Saturated section of kitchen ceiling**



**Photo 5 – Repaired waste water pipe**



**Photo 6 – New extractor fan in bathroom**



**Photo 7 – Cracked floor tiles in bathroom**



**Photo 8 – Living room window and radiator**



**Photo 9 – Dampness below curtain rail**



**Photo 10 – Detector within boiler cupboard**

Nick Allan FRICS  
Surveyor – Ordinary Member  
First-tier Tribunal  
Housing and Property Chamber - 10<sup>th</sup> August 2017